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Error to Corporation Court of Roanoke.

Ira Kitchen was convicted of rape, and brings error.. Affirmed.

*John G. Challice*, of Roanoke, for plaintiff in error.

*John R. Saunders*, *Atty. Gen.*, *J. D. Hank, Jr.*, *Asst. Atty. Gen.*, and *Leon M. Bazile*, *Second Asst. Atty. Gen.*, for the Commonwealth.

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BROWN *v.* COMMONWEALTH.

March 16, 1922.

[111 S. E. 112.]

**1. Homicide (§ 314\*)—Jury Can Not Fix Less Punishment on Convict for Murdering Guard than Electrocution.**—Under Code 1919, § 5051, the jury can not fix any less punishment of a convict for murdering his guard than electrocution.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 169.]

**2. Homicide (§ 144\*)—In Prosecution for Murdering Guard, Commonwealth Must Prove Accused Was Convict.**—In a prosecution of a convict for murdering his guard, under Code 1919, § 5051, the commonwealth must prove that at the time of the homicide accused was a convict.

**3. Criminal Law (§ 446\*)—Certified Copy of Judgment and Order of Condemnation Held Sufficient to Identify Defendant as Convict.**—In a prosecution of a convict, under Code 1919, § 5051, for murdering his guard, a certified copy of the judgment and order of condemnation of defendant for a felony, for which the indictment charged he had been sentenced to a penitentiary term, which he was serving as a member of the convict road force, held sufficient to identify defendant as such convict.

Error to Circuit Court, Orange County.

Ernest Brown, a convict, was convicted of murdering his guard and he brings error. Affirmed.

*E. H. De Jarnette, Jr.*, of Orange, for plaintiff in error.

*John R. Saunders*, *Atty. Gen.*, *J. D. Hank, Jr.*, *Asst. Atty. Gen.*, and *Leon M. Bazile*, *Second Asst. Atty. Gen.*, for the Commonwealth.

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EVANS *v.* COMMONWEALTH.

March 16, 1922.

[111 S. E. 113.]

**Criminal Law (§ 1159 (3)\*)—Finding of Fact by Jury Conclusive.**—In a prosecution for the manufacture and sale of ardent spirits,

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.